



March 17, 2005

Via Electronic Mail

Department of Planning and Development
700 5th Ave, Suite 2000
PO Box 34019
Seattle, WA 98124-4025

RE: City of Seattle Environmental Critical Areas Update

Dear Director Sugimura:

The beauty and diversity of the natural environment in and around our city is one of the characteristics that most distinguishes Seattle from other major cities in and around the country and the world. The long-term health and wealth of the community depend... on environmental quality. (City of Seattle Comprehensive Plan 2005)

Seattle Audubon is pleased to submit the following comments and suggestions to the City of Seattle's Environmental Critical Areas Ordinance (ECA). If successful, the ECA will implement the environmental goals contained in the City's Comprehensive Plan and ensure, as stated above, that the natural environment remains a unique and distinguishing characteristic for Seattle.

We fully recognize the imposing challenges of land use planning and development in an urban area, and the need to balance many competing interests and needs. We agree that balance and flexibility are critical to the success of any planning effort. However, we view the ECA as a unique opportunity – and mandate, in fact – to elevate environmental issues to a more prominent position within the land use decision-making process. Throughout history natural areas have been viewed as barriers to development. Wetlands are filled, slopes are leveled and trees are removed to make way for economic return on investment. Only recently has the full value of natural areas begun to emerge. Our natural areas are more than objects to be transformed to meet our desires, they are vital systems that protect drinking water supplies, minimize flooding, clean our air and provide home to our wildlife.

Seattle Audubon's comments are organized into four major areas:

- The Ordinance's proposed purpose
- Integration of the Ordinance with the Comp Plan
- Detailed suggestions for changes to text
- Implementation and follow through

The Ordinance's Purpose Should Not be to Promote Development

The City has several avenues to promote development. The City's Comprehensive Plan contains land use, transportation, housing, capital facilities, utilities, economic development and neighborhood planning elements. Each of these elements focuses on promoting balanced development throughout our city. In addition, as part of implementing the Comprehensive Plan, the Seattle is promoting a new Center City strategy, major investments in South Lake Union and preparing the way to add 60,000 new households. This major focus on adding density is an important tool in maintaining a healthy city and region. But it is only one of many tools that the city needs to consider when addressing land use issues. Adding density without attending to the necessary green spaces and public spaces will ultimately lead to neighborhoods with reduced livability. The ECA is a major way to protect, preserve and enhance livability in the City.

The purpose of the draft ordinance is "to promote safe, stable and compatible development..." (p. 2, Draft Ordinance). Seattle Audubon emphatically disagrees with this policy. Whatever the purpose of the Land Use Code or DPD, the purpose of the Environmentally Critical Areas Ordinance is not to promote, facilitate or even accommodate development. Its purpose is to preserve and enhance those few remaining acres of environmentally critical areas that are mandatory elements of Seattle's uniqueness and livability. An ECA ordinance protects the functional health of environmentally critical areas. Therefore, proposed development within an ECA needs to be more stringently evaluated against the criteria of health, safety and welfare of the entire City and region. This does not mean that development within an ECA cannot reach full development potential, but it does mean the City has an obligation to alert all landowners within an ECA that their sites pose unique and difficult challenges to development.

By definition, ECAs are sensitive, critical, hazardous and vital. They are not distributed evenly around the city, but found in very specific geographic areas. Property owners within an ECA must be made aware that their property is unique and directly connected to the health, safety and welfare of all citizens in the City. All land development is speculative, after all. Developers need to be accountable for undertaking a speculative venture and the City needs to be accountable for the protection of the community's vital resources.

The proposed purpose statement fosters the stereotype that environmental critical areas are barriers to be overcome, and that developing the site is the top priority. The draft ordinance proposes to identify individual site limitations as a result of environmentally critical areas and then mitigate or avoid impact on a site-by-site basis. If it is intended to protect ECAs, this process is doomed to fail. We need a process that identifies and evaluates cumulative impacts to the City's environmentally critical areas. Nowhere in the proposed ordinance are

cumulative impacts even suggested. In fact, the only occurrence of cumulative impacts has been stricken from the existing ordinance. On pages 21-22, under General Development Standards, the following language was removed.

Detailed analysis of impacts, including cumulative impacts of development, of the proposed development upon wetlands, riparian corridors, native vegetation and wildlife habitats, water quality, fisheries, natural water temperature, slope and soil conditions, and surface water drainage may be required by the Director...

The City cannot protect critical areas without paying attention to the systems that these areas represent. Only by having a mechanism to address cumulative impacts can the City effectively address environmental systems. A tree is part of the forest and the wetland is part of the watershed.

The ECA Ordinance should not – and will not – stop alterations to the environment, but Seattle Audubon hopes that the ordinance will place the burden on the developer to ensure that proposed developments will not adversely impact the few remaining critical areas in the City. This goes beyond ensuring “development that avoids adverse environmental impacts...” (p. 2, Draft Ordinance). We ask for an ECA Ordinance that promotes not safe and stable development, but safe and stable environmental functions and systems.

Connection to the Comprehensive Plan

Mayor Nickels has suggested that the ECA Ordinance be incorporated into the City’s Comprehensive Plan. Councilmember Steinbrueck has proposed establishing sustainability measures or indicators as part of the Comprehensive Plan process, measuring the amount of urban forest, wildlife habitat, and permeable surface coverage, and an index of creek health. Seattle Audubon strongly agrees with both suggestions. We also commend this Comp Plan language:

“Providing new emphasis on the connection between the natural environment and human health.”

“Highlighting the City’s approach of using natural systems instead of, or in conjunction with...”

Seattle Audubon also applauds the suggested actions of the Comp Plan to “develop quantifiable goals and monitoring systems specifically for developing indicators related to human health.” However, many of the details of these actions are not yet developed and as we all know the devil is in the details. As implied in the foregoing discussion about the ECA Ordinance’s failure to include cumulative impact analysis, the City cannot possibly address the connection between natural systems and human health on a site-by-site basis! Some element of cumulative impact analysis needs to be

incorporated into this process. Seattle Audubon suggests that this is best achieved by linking the ECA Ordinance and the Comprehensive Plan, as Councilmember Steinbrueck has proposed. The City needs to undertake as soon as possible the public process to identify targets, finalize indicators and begin the oversight process of ensuring the ECA Ordinance meets the systems test established in the Comp Plan language.

Detailed Suggested Changes to Text

Seattle Audubon believes most strongly the success of any ordinance is not the regulation and text but the willingness of the City to implement and enforce the ordinance. However, we provide the following detailed comments to help fine-tune the ordinance language.

25.09.020. *Describes Category IV wetlands as unregulated if they are under 1,000 square feet.* Without data on the functional health of each of these wetlands, Seattle Audubon cannot support removing jurisdiction over all of them, sight unseen. We agree that many small urban wetlands are degraded, but many still play a positive role in the watershed. A certain small may provide the only water source within a large radius for urban birds. It may provide valuable filtration uphill from a salmon stream. Maybe restoration of this wetland makes more sense than filling it. But categorically abandoning jurisdiction over these small wetlands precludes any opportunity to explore any options beside filling and developing. We suggest the City retain jurisdiction over these wetlands and strongly pursue wetland banking opportunities and restoration potential.

Other elements of this section need clarification. Why is the slope classification for Potential Landslide Areas removed? We also seek clarification on wildlife and fish habitat conservation areas. A distinction of habitat types frequently is more useful than putting fish and wildlife habitat under the same regulatory regime. We are also concerned with the reliance on WDFW and King County as the sources of wildlife corridors and wildlife areas: These analyses were done at a regional scale and are therefore often too coarse a grain to distinguish important urban habitat areas. The City needs to ensure a fine-grain analysis of urban habitat areas and supplement this data with a detailed analysis. Seattle Urban Nature Project maps are an excellent source of public land information.

This section also establishes the opportunity to identify wildlife species of concern. We strongly support this element and hope to see the City perform such an analysis

- 25.09.160 *Buffer discussion:* Buffers are a difficult situation to deal with, especially in urban environments. According to most of the Best Available Science, Seattle will be facing an uphill battle to ensure adequate buffer width. Because of this hurdle Seattle Audubon believe the City should spend more time developing design standards and protocols to ensure buffer **health** regardless of width. Vegetation, especially tree canopy, must be retained in existing buffers; new plantings must be with native plant material; and that all buffers must be evaluated for functional health.
- 25.09.200 *Daylighting:* Few realistic incentives exist that encourage daylighting on a site-by-site basis. Seattle Audubon urges the City to develop a comprehensive approach to daylighting creeks. By allowing this to occur in a piece-meal fashion based on the developers' desires and abilities, we are missing opportunities and may be creating unintended consequences on adjacent properties. Urban hydrology is a complex system and the City needs to lend better guidance and support for undertaking such a high profile, expensive and complex issue.
- 25.09.320 *Trees and vegetation.* The significant rewrites in this section concern Seattle Audubon. Earlier language was much stronger and supportive of the mission to protect trees and vegetation during construction. Why does the draft remove the specific threshold criteria triggering the need for a permit? In each case, there is strong justification to require permitting and explanation of vegetation removal, **especially since we are dealing with activity in an area that is environmentally**. The draft language may be fine for other parts of the City but not under these circumstances. The ECA ordinance should be more restrictive than general development areas throughout the City.

Implementation and Follow Through

A successful ECA Ordinance will minimize impact to environmental areas, and also establish mitigation requirements, enforce violations and even enhance environmentally critical areas through design recommendations and best management practices. Seattle Audubon's biggest concern involves appropriate follow through on the stated actions in the ordinance. Any ordinance is only as good as the willingness and ability of the local government to follow-through. While the current ECA does outline an enforcement protocol, Seattle Audubon does not feel the penalties are adequate enough to back up the new code. Traditionally citizens have had to pursue lawsuits and watchdog the City in instances of enforcement. We propose a higher penalty than the \$500 a day and suggest the City undertake an evaluation of its enforcement policy. We also suggest the possible formation of a citizen oversight committee to track violations and provide an independent analysis of enforcement.

Seattle Audubon also urges that the ECA Ordinance, or companion documents, need to be designed to educate the development community on issues of

innovative design strategies to minimize impact to environmentally critical areas. For instance, the ECA mentions best management practices several times throughout the document but only in a few places does it actually describe any best management techniques. There need to be a better connection between what the City wants developers to do and what the regulation describes. It is unsettling to Seattle Audubon and other environmental groups how often local units of government describe the importance of flexibility and balance in the land use process, but very rarely try to describe innovative and unique approaches that developers should undertake to actually achieve balance. If we were pessimistic we would view balance and flexibility as only pertaining to the ability to make development easier.

Another issue of concern is the lack of baseline data and an understanding of where we stand today in regards to protecting ECAs. How many acres of environmentally critical areas do we have in the City, and more importantly, what is their functional evaluation?

Accompanying the absence of baseline data is an apparent inability to track and analyze impacts to environmentally critical areas. How many acres of environmentally critical areas were impacted last year? How many development permits were submitted that were located in an environmentally critical area? Are buffers working to protect water quality? Without good data to analyze, each update of the ECA ordinance reinvents the wheel. Seattle Audubon strongly supports the City's creation of an environmentally critical area report card or audit published on at least a bi-annual basis. This audit should link development permit actions with the ECA Ordinance to determine if the new regulation effectively protects environmentally critical areas.

Summary

Urban livability is defined in many ways, often unique to the individual, but one very common definition is the proximity, accessibility and quality of green space and parks. It is fair to say a city without parks and open space would soon lose its competitive advantage, and a city that invests in parks and open space will gain in competitive advantage and livability. As the Seattle faces considerable growth over the next few decades, we urge the City to create and implement an Environmentally Critical Areas Ordinance that will ensure long-term health of our critical areas and livability within our neighborhoods.

Thank you for making this plan a priority, and for the opportunity to comment.

Sincerely,

/s/

Marilyn Sandal and Lynn Ferguson
Co-chairs Urban Habitat Subcommittee

/s/

Matthew Mega, AICP
Director of Urban Habitat